

HOUSE BILL No. 1918

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38; IC 35-50.

Synopsis: Sentencing of offenders. Permits a trial court to modify a sentence without the concurrence of the prosecuting attorney after the defendant has served 365 days in prison if the defendant is eligible for placement in a community corrections program. Repeals the habitual substance offender statute. Provides that a person may only be found to be a habitual offender if the person commits a violent felony. Specifies that a violent felony is a crime against the person, certain types of arson, burglary of a dwelling or while armed, resisting law enforcement while armed, escape while armed, or rioting while armed, and any other felony that results in serious bodily injury. Makes conforming amendments.

Effective: July 1, 2003.

Smith V

January 23, 2003, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1918

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-1-17, AS AMENDED BY P.L.291-2001,
2 SECTION 224, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) Within three hundred
4 sixty-five (365) days after:

5 (1) the defendant begins serving ~~his~~ **the defendant's** sentence;
6 (2) a hearing at which the defendant is present and of which the
7 prosecuting attorney has been notified; and
8 (3) obtaining a report from the department of correction
9 concerning the defendant's conduct while imprisoned;
10 the court may reduce or suspend the sentence. The court must
11 incorporate its reasons in the record.

12 (b) If more than three hundred sixty-five (365) days have elapsed
13 since the defendant began serving the sentence and after a hearing at
14 which the convicted person is present, the court may reduce or suspend
15 the sentence, subject to the approval of the prosecuting attorney.
16 However, if in a ~~sentencing hearing~~ for a defendant ~~conducted after~~
17 ~~June 30, 2001, the court could have placed the defendant is eligible for~~



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placement in a community corrections program as an alternative to commitment to the department of correction, the court may modify the defendant's sentence under this section without the approval of the prosecuting attorney to place the defendant in a community corrections program under IC 35-38-2.6.

(c) The court must give notice of the order to reduce or suspend the sentence under this section to the victim (as defined in IC 35-35-3-1) of the crime for which the defendant is serving the sentence.

(d) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.

(e) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(f) Notwithstanding subsections (a) and (b), the court is not required to conduct a hearing before reducing or suspending a sentence if:

- (1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and
- (2) the defendant has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

SECTION 2. IC 35-38-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) The department, after diagnosis and classification, shall:

- (1) determine the degree of security (maximum, medium, or minimum) to which a convicted person will be assigned;
- (2) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under IC 35-50-2-2(b)(3) due to a prior unrelated Class C or Class D felony, determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;
- (3) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under:

- (A) IC 35-50-2-2.1(a)(1)(B);
- (B) IC 35-50-2-2.1(a)(1)(C); or
- (C) IC 35-50-2-2.1(a)(2);

determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

- (4) for each offender:

- (A) committed to the department because the offender has been convicted for the first time of a Class C or a Class D felony; and

- (B) whose sentence may be suspended;

determine whether the offender is an appropriate candidate for

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home detention under IC 35-38-2.5;

(5) notify the trial court and prosecuting attorney if the degree of security assigned differs from the court's recommendations; and
 (6) petition the sentencing court under IC 35-38-1-21 for review of the sentence of an offender who is not a habitual offender sentenced under IC 35-50-2-8 ~~or IC 35-50-2-10~~; and who the department has determined under subdivision (2) or subdivision (3) to be an appropriate candidate for home detention.

(b) The department may change the degree of security to which the person is assigned. However, if the person is changed to a lesser degree of security during the first two (2) years of the commitment, the department shall notify the trial court and the prosecuting attorney not less than thirty (30) days before the effective date of the changed security assignment.

SECTION 3. IC 35-50-1-2, AS AMENDED BY P.L.228-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) As used in this section, "crime of violence" means:

- (1) murder (IC 35-42-1-1);
- (2) attempted murder (IC 35-41-5-1);
- (3) voluntary manslaughter (IC 35-42-1-3);
- (4) involuntary manslaughter (IC 35-42-1-4);
- (5) reckless homicide (IC 35-42-1-5);
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual misconduct with a minor as a Class A felony (IC 35-42-4-9);
- (12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- (13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- (14) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)

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in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of **a terms term** of imprisonment under IC 35-50-2-8 ~~and IC 35-50-2-10~~, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct, shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

- (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or
- (2) while the person is released:
 - (A) upon the person's own recognizance; or
 - (B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If a court determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 4. IC 35-50-2-8, AS AMENDED BY P.L.291-2001, SECTION 226, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) **As used in this section, "violent felony" has the following meaning:**

- (1) A felony under IC 35-42, with the exception of railroad mischief (IC 35-42-2-5.5).**
- (2) Arson (IC 35-43-1-1) for hire that endangers human life or results in injury to a person other than the defendant.**
- (3) Burglary (IC 35-43-2-1) as a Class B felony.**
- (4) Resisting law enforcement (IC 35-44-3-3) with a deadly weapon.**
- (5) Escape (IC 35-44-3-5) with a deadly weapon.**
- (6) Rioting (IC 35-45-1-2) with a deadly weapon.**
- (7) Any other felony that involves serious bodily injury.**
- (8) An attempt to commit a felony described in subdivisions (1) through (7).**

(b) Except as otherwise provided in this section, the state may seek



to have a person sentenced as a habitual offender for any **violent** felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated **violent** felony convictions.

~~(b)~~ (c) The state may not seek to have a person sentenced as a habitual offender for a **violent** felony offense under this section if

~~(1)~~ the ~~offense~~ **violent felony** is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction.

~~(2)~~ the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

~~(3)~~ all of the following apply:

~~(A)~~ The offense is an offense under IC 16-42-19 or IC 35-48-4;

~~(B)~~ The offense is not listed in section 2(b)(4) of this chapter;

~~(C)~~ The total number of unrelated convictions that the person has for:

~~(i)~~ dealing in or selling a legend drug under IC 16-42-19-27;

~~(ii)~~ dealing in cocaine or a narcotic drug (IC 35-48-4-1);

~~(iii)~~ dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

~~(iv)~~ dealing in a schedule IV controlled substance (IC 35-48-4-3); and

~~(v)~~ dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one ~~(1)~~.

~~(c)~~ (d) A person has accumulated two (2) prior unrelated **violent** felony convictions for purposes of this section only if:

(1) the second prior unrelated **violent** felony conviction was committed after sentencing for the first prior unrelated **violent** felony conviction; and

(2) the ~~offense~~ **violent felony** for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated **violent** felony conviction.

~~(d)~~ (e) A conviction does not count for purposes of this section as a prior unrelated **violent** felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

or

~~(3)~~ all of the following apply:

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(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3; and

(v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(f) The requirements in subsection (b) (c) do not apply to a prior unrelated **violent** felony conviction that is used to support a sentence as a habitual offender. A prior unrelated **violent** felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated **offense violent felony** was enhanced for any reason, including an enhancement because the person had been convicted of another offense. ~~However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repeated); or IC 9-12-3-2 (repeated) may not be used to support a sentence as a habitual offender.~~

(g) If the person was convicted of the **violent** felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(h) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated **violent** felony convictions.

(i) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 5. IC 35-50-2-10 IS REPEALED [EFFECTIVE JULY 1, 2003].

